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**THIS DISPOSITION IS NOT
CITABLE AS PRECEDENT
OF THE TTAB**

Paper No. 14
GDH/gdh

UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re Fame Jeans, Inc.

Serial No. 75/889,614

Lewis F. Gould, Jr., of Duane, Morris & Heckscher LLP.

Amy E. Hella, Trademark Examining Attorney, Law Office 110
(Chris A.F. Pedersen, Managing Attorney).

Before Seeherman, Hohein and Bottorff, Administrative Trademark
Judges.

Opinion by Hohein, Administrative Trademark Judge:

Fame Jeans, Inc. has filed an application to register
the mark "MOTO JEANSWEAR" for "clothing, namely, jeans, jeans
tops and jeans jackets."¹

Registration has been finally refused under Section
2(d) of the Trademark Act, 15 U.S.C. §1052(d), on the ground

¹ Ser. No. 75/889,614, filed on January 6, 2000, which is based on an
allegation of a bona fide intention to use such mark in commerce. The
term "JEANSWEAR" is disclaimed.

that applicant's mark, when used in connection with its goods, so resembles the mark "MOTO WEAR" and design, which is registered as shown below



for "garments for motorcycle riders; namely, jackets and one-piece overall riding suits,"² as to be likely to cause confusion, mistake or deception.

Applicant has appealed. Briefs have been filed, but an oral hearing was not requested. We affirm the refusal to register.

Our determination under Section 2(d) is based on an analysis of all of the facts in evidence which are relevant to the factors bearing on the issue of whether there is a likelihood of confusion. In re E. I. du Pont de Nemours & Co., 476 F.2d 1357, 177 USPQ 563, 568 (CCPA 1973). However, as indicated in Federated Foods, Inc. v. Fort Howard Paper Co., 544

² Reg. No. 1,743,261, issued on December 29, 1992, which sets forth a date of first use anywhere and first use in commerce of May 25, 1991; affidavit §8 accepted and affidavit §15 acknowledged. The term "WEAR" is disclaimed. In addition the registration states that the mark "consists of a stylized capital letter 'M' above a stylized capital letter 'W'" and "is lined for the colors green, red, and blue."

F.2d 1098, 192 USPQ 24, 29 (CCPA 1976), in any likelihood of confusion analysis, two key considerations are the similarity of the goods and the similarity of the marks.³

Turning first, therefore, to consideration of the respective goods, it is well established, as pointed out by the Examining Attorney in her brief, that goods need not be identical or even competitive in nature in order to support a finding of likelihood of confusion. Instead, it is sufficient that the goods are related in some manner and/or that the circumstances surrounding their marketing are such that they would be likely to be encountered by the same persons under situations that would give rise, because of the marks employed in connection therewith, to the mistaken belief that they originate from or are in some way associated with the same producer or provider. See, e.g., Monsanto Co. v. Enviro-Chem Corp., 199 USPQ 590, 595-96 (TTAB 1978) and In re International Telephone & Telegraph Corp., 197 USPQ 910, 911 (TTAB 1978).

Applicant argues, however, that its goods are not only "non-competitive," but they are "unrelated to the goods sold by the cited registrant." In particular, applicant insists that it "will produce and sell demin [sic] clothing such as jeans, jeans jackets and jeans tops" under its "MOTO JEANSWEAR" mark and it

³ The court, in particular, pointed out that: "The fundamental inquiry mandated by §2(d) goes to the cumulative effect of differences in the

"does not produce or sell leather clothing or one-piece overall suits" under such mark. Thus, according to applicant, "it is clear that ... jeans and other denim clothing articles ... are completely different than the leather riding jackets and one-piece coverall riding suits provided" by registrant under the cited mark. In consequence thereof, applicant asserts that "it is clear that the channels of trade and the types of purchasers would also be different" for the respective goods.

We agree with the Examining Attorney, however, that the respective goods are closely related products and, as identified, would even encompass the same articles of clothing, namely, jeans jackets. As the Examining Attorney correctly observes in her brief, it is well established that the issue of likelihood of confusion must be determined on the basis of the goods as they are set forth in the involved application and the cited registration. See, e.g., *CBS Inc. v. Morrow*, 708 F.2d 1579, 218 USPQ 198, 199 (Fed. Cir. 1983); *Squirtco v. Tomy Corp.*, 697 F.2d 1038, 216 USPQ 937, 940 (Fed. Cir. 1983); and *Paula Payne Products Co. v. Johnson Publishing Co., Inc.*, 473 F.2d 901, 177 USPQ 76, 77 (CCPA 1973). Thus, where such goods are broadly described as to their nature and type, it is presumed in each instance that in scope the application and

essential characteristics of the goods and differences in the marks."

registration encompass not only all goods of the nature and type described therein, but that the identified goods move in all channels of trade which would be normal for those goods and that they would be purchased by all potential buyers thereof. See, e.g., In re Elbaum, 211 USPQ 639, 640 (TTAB 1981).

Here, while applicant's "jeans, jeans tops and jeans jackets" are goods which are necessarily limited to items of clothing made of denim or other strong, coarse and durable fabrics,⁴ such apparel is not otherwise restricted, especially with respect to its use or function, and clearly would be suitable, like registrant's jackets and one-piece overall riding suits, as garments for motorcycle wear. Similarly, registrant's "jackets and one-piece overall riding suits," although specifically restricted to those marketed as "garments for motorcycle riders," are not limited as to their composition and thus could be made from denim or other durable fabric as well as material traditionally associated with such apparel, namely, leather. Both applicant's and registrant's goods, as identified, therefore include jeans jackets for motorcycle wear and, in any event, such jackets, along with jeans and jeans

⁴ We judicially notice in this regard that, for instance, The American Heritage Dictionary of the English Language (3rd ed. 1992) at 498 defines "denim" as "**1. a.** A coarse twilled cloth, usually cotton, used for jeans, overalls, and work uniforms" and at 965 lists "jean" as "**1.** A heavy, strong, twilled cotton, used in making uniforms and work clothes. **2. jeans.** Pants made of jean, denim, or other durable fabric."

tops, plainly are closely related to one-piece overall riding suits for motorcycle wear.

Moreover, even considering applicant's jeans jackets to be specifically different from, rather than legally identical to, registrant's jackets for motorcyclists, it is still the case that jeans jackets, as well as jeans and jeans tops, are all types of casual clothes which are purchased and worn by, among others, the same classes of consumers as those, for instance, who enjoy riding motorcycles and thus would purchase and wear motorcycle jackets and one-piece overall riding suits. Because the respective goods would, by their very nature and use, clearly be offered and sold to the same classes of purchasers, namely, motorcycle enthusiasts, and would be marketed through the same or similar channels of trade, including motorcycle shops, the use of the same or similar marks in connection therewith would be likely to cause confusion as to source or sponsorship.

This brings us to consideration of the marks at issue. Applicant contends that its "MOTO JEANSWEAR" mark, "taken as a whole, is dissimilar in overall sound, appearance and meaning" from registrant's "MOTO WEAR" and design mark, which applicant characterizes as essentially a "design mark," and that the two marks "do not create the same overall impression." Among other things, applicant submits that the "differences in sound and

appearance are obvious," given that the term "JEANS" in its mark lends such mark an additional syllable not present in registrant's mark and that the latter includes a prominent, multifaceted polygon which includes the colors red, green and blue and represents the stylized letters "M" and "W." Applicant contends, moreover, that in terms of meaning and commercial impression, the respective marks are "quite different" and unlikely to cause confusion because:

Applicant's mark MOTO JEANSWEAR connotes a particular type of clothing (in particular, jeans and denim material clothes); the "moto" portion of the mark being used in a completely arbitrary fashion. In contrast, the Cited Mark specifically connotes clothing (i.e., "WEAR") which is worn specifically by motorcycle riders (i.e., "MOTO"), and in fact is sold to them as such. Thus, since the commercial impression[s] conveyed by the marks are different, reversal ... on this ground is requested.

We concur with the Examining Attorney, however, that when considered in their entirety, applicant's mark "MOTO JEANSWEAR" and registrant's mark "MOTO WEAR" and design are so substantially similar, when used in connection with jeans, jeans tops and jeans jackets and such identical in part and otherwise closely related garments as motorcycle jackets and one-piece overall riding suits, as to be likely to cause confusion as to origin or affiliation. As the Examining Attorney accurately points out in her brief, "the only difference between the word

portions of the ... marks is the descriptive wording JEANSWEAR in the Applicant's mark versus the descriptive wording WEAR in the Registrant's mark." Given that the former simply describes jeans and other apparel made from denim and similar fabrics while the latter merely designates items of apparel in general, such differences are not sufficient that the addition thereof to the term "MOTO," even though regarded as suggestive of motorcycle garments, results in marks which are distinguishable. Rather, as properly noted by the Examining Attorney in her brief:

The word portions of the marks MOTO WEAR and MOTO JEANSWEAR share the terms MOTO and WEAR, and therefore, look [quite] alike, sound very similar and give [substantially] the same commercial impression. The average consumer would likely believe that the sources for the goods were the same, or that the Registrant had expanded his clothing items to include motorcycle clothing items made from the JEAN material.

Although applicant, as mentioned previously, also rests a significant amount of its argument that confusion is not likely on the fact that registrant's mark contains a prominently colored display of the stylized letters "M" and "W" as a design feature, the Examining Attorney properly notes that where a mark consists of both a word portion and a design portion, it is generally the word portion which is more likely to be impressed upon a consumer's memory and to be used in calling for and/or

asking about the goods. See, e.g., In re Appetito Provisions Co. Inc., 3 USPQ2d 1553, 1554 (TTAB 1987). Thus, and even assuming that an appreciable number of consumers would, because of the words "MOTO WEAR," recognize the design feature of registrant's mark as consisting of the highly stylized letters "M" and "W" and not just a multicolored hexagon, we agree with the Examining Attorney that the terms comprising the literal portions of the respective marks "are nearly identical in appearance, sound and meaning" and that the design element in registrant's mark "does not obviate the similarity between the marks." Overall, such marks project substantially the same commercial impression, particularly when allowance is made for the fallibility of consumer memory and the corresponding general rather than specific recollection of marks. See, e.g., Grandpa Pidgeon's of Missouri, Inc. v. Borgsmiller, 477 F.2d 586, 177 USPQ 573, 574 (CCPA 1973); Envirotech Corp. v. Solaron Corp., 211 USPQ 724, 733 (TTAB 1981); and Sealed Air Corp. v. Scott Paper Co., 190 USPQ 106, 108 (TTAB 1975.

Accordingly, we conclude that purchasers and potential customers, who are familiar or acquainted with registrant's "MOTO WEAR" and design mark for its "garments for motorcycle riders; namely, jackets and one-piece overall riding suits," would be likely to believe, upon encountering applicant's substantially identical "MOTO JEANSWEAR" mark for its "clothing,

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namely, jeans, jeans tops and jeans jackets," that such in part legally identical and otherwise closely related articles of apparel emanate from, or are sponsored by or associated with, the same source. Such consumers, in particular, would be likely to view applicant's "MOTO JEANSWEAR" products as a new or expanded line from the makers of registrant's "MOTO WEAR" and design motorcycle garments and vice versa.

Decision: The refusal under Section 2(d) is affirmed.